

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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NICOLAS GOUREAU and STEPHANIE MENKIN, :  
individually and derivatively on behalf of :  
GOOBERRY CORP., a New York corporation, :

Plaintiffs, :

Case No. 1:20-cv-04691-MKV

- against - :

MARCUS LEMONIS, an individual, ML RETAIL, :  
LLC, a Delaware limited liability company, :  
MARCUS LEMONIS, LLC, a Delaware limited :  
liability company, and MACHETE CORPORATION :  
d/b/a MACHETE PRODUCTIONS, a California :  
corporation, :

Defendants, :

and :

GOOBERRY CORP., a New York corporation, :

Nominal Defendant. :

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**DECLARATION OF MICHAEL D. WEXLER IN SUPPORT OF MOTION TO DISMISS**

I, MICHAEL D. WEXLER, declare:

1. I am a partner at the law firm of Seyfarth Shaw LLP, counsel for Defendants Marcus Lemonis, ML Retail, LLC, and Marcus Lemonis, LLC (collectively, the “ML Defendants”) in the above-captioned action.

2. I submit this Declaration in support of the ML Defendant’s motion for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), dismissing with prejudice the Complaint of Plaintiffs Nicolas Goureau (“Goureau”) and Stephanie Menkin (“Meknin”) (collectively, “Plaintiffs”) as against the ML Defendants, and granting such other and further relief as the Court may deem just and proper.

3. Annexed hereto as **Exhibit A** is a copy of the Amended Complaint, dated August 17, 2020, in this action (Dkt. No. 17).

4. Annexed hereto as **Exhibit B** is a copy of the Amended Complaint, dated August 24, 2020, filed by Plaintiffs in the Delaware Chancery Court (the “Delaware Lawsuit”).

5. Annexed hereto as **Exhibit C** is a copy of a chart comparing Plaintiffs’ causes of action in this lawsuit to Plaintiffs’ causes of action in the Delaware Lawsuit.

6. Annexed hereto as **Exhibit D** is a copy of a chart comparing the factual allegations in this lawsuit to the factual allegations in the Delaware Lawsuit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 23, 2020 in Chicago, Illinois.

*/s/ Michael D. Wexler*

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Michael D. Wexler